

JAN R. CHRISTENSEN  
UNITED INVESTORS CORPORATION

IBLA 74-116

Decided March 7, 1974

Appeal from a decision by the Utah State Office, Bureau of Land Management, denying a petition to reinstate oil and gas lease U 6585.

Affirmed.

Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

The failure to receive a courtesy notice informing the lessee of the rent due will not be deemed a "justifiable" reason for the failure to pay the rental on or prior to the date due, within the meaning of section 31 of the Mineral Leasing Act, 30 U.S.C. § 188(c) (1970).

APPEARANCES: Michael Gottfredson, Esq., Nielsen, Conder, Hansen and Henriod, Salt Lake City, Utah, for appellants.

## OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Jan R. Christensen <sup>1/</sup> and United Investors Corporation appeal from the decision of the Utah State Office, Bureau of Land Management, dated September 12, 1973, which refused to reinstate oil and gas lease U 6585.

The Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Section 31 of the Mineral Leasing Act was further amended by the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970), to allow reinstatement of a terminated lease upon a lessee's timely petition. The lessee, however, must show that the failure to pay on time "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." Id. The State Office, in denying the lessee's petition to reinstate the lease, found that "the failure to make timely payment was not justifiable, but was due to a lack of reasonable diligence." We affirm the decision.

Appellants' statement of reasons for appeal includes the following factual assertions. We will accept them as true for the purposes of this appeal.

Mr. Christensen telephoned Mr. Lewis H. Larsen, the principal stockholder of United Investors Corporation, to whose address the notice of payment due on the leases was sent [and] \* \* \* he asked him if there were any lease payments due and payable on August 1. Mr. Christensen was told by Mr. Larsen that he did not believe there were any payments due as he had not received any notices; however, Mr. Larsen explained that he had recently moved from Salt Lake City, Utah, to Divide, Colorado, and perhaps his mail had not been forwarded to him. Mr. Larsen suggested that Mr. Christensen call an attorney in Salt Lake who would perhaps know whether any lease payments were due and payable August 1. Thereafter Mr. Christensen called the attorney in Salt Lake City [and] \* \* \* asked the attorney if there were any lease payments due and

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<sup>1/</sup> According to departmental records United Investors is the holder of the lease. Christensen purportedly purchased the lease on January 11, 1973, with United Investors retaining legal title as a security interest. Since the transfer has not been approved by the Department, Christensen has no interest in the lease that we can recognize. 43 CFR 3106.1-2 and 3106.3-3. However, we will treat Christensen as an "interested party" and allow his appeal. 43 CFR 4.410. Cf. 5 U.S.C. § 555(b) (1970).

payable on August 1 and was informed by the attorney that he knew of none but would check with a representative of the company he represented on the matter. Mr. Christensen then advised his secretary to follow through on the matter. \* \* \*

She thereafter called back again and was told by the attorney that since the company had some leases to pay that day that the company would pay any leases due, and Mr. Christensen could reimburse the company. That evening the company representative called Mr. Christensen's secretary and informed her that the lease payments had been made. In fact, as was determined later, lease payments on leases that the company had were paid but the payment on lease number 6585 was not made. On Friday, August 3, Mr. Christensen's secretary telephoned the Bureau of Land Management and was informed that the lease payment on lease number 6585 had not been paid. On Tuesday, August 7, Mr. Christensen and Mr. Larsen met with Mr. Cox, explained the situation to him and tendered a cashier's check to the Bureau of Land Management in the sum of \$1,260.

The rental payment due date was August 1, 1973. Since payment was not made on or before that date, the lease automatically terminated. Tender of payment was made within 20 days of the anniversary date, making the lease eligible for reinstatement if the lessee was either reasonably diligent in attempting to make the payment or if the failure to pay promptly was justifiable. 30 U.S.C. § 188(c) (1970).

The lease cannot be reinstated on the basis that reasonable diligence was used in making the payment. Regulation 43 CFR 3102.7 provides:

\* \* \* Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. \* \* \*

The first attempt at payment occurred on August 7, six days after the due date. Because the attempt to pay occurred after the due date, reasonable diligence was not exercised. Id.; e.g., R. G. Price, 8 IBLA 290, 291 (1972).

Appellants assert that under the circumstances of this case, their failure to pay was justifiable. A delay is justifiable if it is caused by an event beyond the control of the lessee. Louis Samuel, 8 IBLA 268, 274 (1973). Negligence, forgetfulness or inadvertence do not justify failure to pay on time since they are events in the control of the lessee. We find that the reason the payment was not made on time was due to United Investor's apparent negligence or neglect in not making the payment and in incorrectly informing Christensen that payment had been made. This cause was within the control of the lessee and consequently cannot be the basis for reinstatement. E.g., Harold A. Armann, 13 IBLA 279, 280 (1973); Monturah Co., 10 IBLA 347, 348 (1973).

The second reason offered in support of reversal is that the lessee, United Investor Corporation, may not have received a courtesy notice and consequently was not aware when payment was due. Reliance on receipt of a courtesy notice does not justify failure to pay the annual rental on time. Louis J. Patla, 10 IBLA 127, 128 (1973). An oil and gas lessee has a duty to pay his annual rental even if a courtesy notice is not received. The courtesy notice is not a bill, but a reminder to pay. Failure to receive a notice does not excuse compliance with federal leasing law. Id. The failure to pay was not justifiable.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office denying the petition for reinstatement is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

